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An Age of Extremes: International Law in Crisis: Eight Challenges

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AN AGE OF EXTREMES

INTERNATIONAL LAW IN CRISIS

EIGHT CHALLENGES

*David M. Crane**

*We have learned that we cannot live alone, at peace; that our own well-being is dependent on the well-being of other nations, far away. We have learned that we must live as men We have learned to be citizens of the world, members of the human community.*¹

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I. INTRODUCTION—AN AGE OF EXTREMES

The new world order certainly has turned out to be far different than when President George H. W. Bush made that statement shortly after the fall of the Soviet Union in 1990 and 1991.² It was a heady time, so full of hope, for a renewed world order. Francis Fukuyama declared the end of history, the rise of democracies, and a democratic peace.³ A renewed U.N., neutered during the cold war, was awarded the Nobel Peace Prize.⁴ In the early 1990's the future looked bright indeed.

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¹ President Franklin Delano Roosevelt, Fourth Inaugural Address (Jan. 20, 1945).

² See President George H. W. Bush, State of the Union Address (Jan. 28, 1992) (stating that the President reached an agreement with Russian President Boris Yeltsin wherein both nations would either eliminate or drastically reduce missiles, warheads, and strategic bombers).

³ See Francis Fukuyama, *The End of History?*, 16 NAT'L INTEREST 3 (1989), reprinted in THE GEOPOLITICS READER (Gearóid Ó Tuathail, Simon Dalby & Paul Routledge, eds., 1998) (discussing how the spread of Western liberalization and democratization has signaled the end of major world conflicts and the beginning of a world peace).

⁴ *The Nobel Peace Prize 2001*, NOBELMEDIA.ORG (Oct. 12, 2001), http://www.nobelprize.org/nobel_prizes/peace/laureates/2001/press.html. Founded on June 26, 1945, the United Nations' mission is to foster international peace and security, promote human rights and promote social progress. U.N. Charter arts. 1, 111. The United Nations comprises 192 mem-

It did not take long for the light to dim considerably. Whole regions of the world tumbled into chaos, from the Balkans to the Great Lakes region of East Africa to West Africa.⁵ Tens of thousands of human beings were murdered, raped, mutilated, and maimed.⁶ Eastern Europe more gently eased into a renewed Europe, with only Romania struggling at first, killing its leader and his wife after a kangaroo court;⁷ however discrimination of the Roma people intensified.⁸

Gun runners, diamond dealers, international criminal cartels, and terrorists emerged as this new world order settled into a time of uncertainty, dirty little wars, and terrorist attacks against the West, particularly the U.S. The new world order was evolving into an age of extremes with the very concept of the rule of law challenged. It was not the end of history and a democratic peace to be sure.

As the world stumbled forward into the 21st century, the very fabric of world order was torn when three planes crashed into three buildings in New York and Washington, DC heralding a time of great uncertainty and challenges head.⁹ This commentary will proffer eight observations related to those challenges, challenges that threaten international law.

ber states. Press Release, Department of Public Information, United Nations Member States, U.N. Press Release Org/1469 (July 3, 2006).

⁵ See generally R. CRAIG NATION, *WAR IN THE BALKANS, 1991–2002* (2003) (recounting the background history to the Balkan conflicts, and how the fall of Yugoslavia sent the whole region into war); ABDALLA BUJRA, *DEVELOPMENT POLICY MANAGEMENT FORUM, DPMF OCCASIONAL PAPER, NO. 4, AFRICAN CONFLICTS: THEIR CAUSES AND THEIR POLITICAL AND SOCIAL ENVIRONMENT* (2002), available at <http://www.dpmf.org/Publications/Occasional%20Papers/occasionalpaper4.pdf> (discussing the chaos of various African regions).

⁶ Press Release, United Nations Office at Geneva, UN Releases Report Listing Ten Years of Atrocities in the Democratic Republic of Congo, Identifies Justice Options, U.N. Press Release HC10/047E (Oct. 1, 2010) (“Tens of thousands of people were killed, and numerous others were raped, mutilated or otherwise victimized during the decade.”).

⁷ See CIA, *AT COLD WAR’S END: US INTELLIGENCE ON THE SOVIET UNION AND EASTERN EUROPE, 1989–1991* (Benjamin B. Fischer ed., 1999) (discussing the transition of Eastern Europe after the fall of the USSR, and noting that Romania was the “bloody exception to the rule of peaceful transition”).

⁸ ITALIAN RED CROSS, *GUIDELINES TO ENTER ROMA AND SINTI CAMPS* 34 (Chiara Zanini, trans.), available at http://www.crocerossachepassione.com/attachments/179_Guidelines%20to%20enter%20Roma%20and%20Sinti%20Camps.pdf (noting the prejudices and rumors that spread about the Roma after Ceausescu lost power in Romania in 1989).

⁹ See NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES, *THE 9/11 COMMISSION REPORT* (2004) (discussing in detail how the 9/11 attacks affected the United States, forever changing domestic and internationally policy, and proposing vague recommendations to combat the uncertainty of terrorists).

II. THE CHALLENGES AHEAD

A decade into the 20th century, democracy has remained the aspirational goal of many peoples around the globe, yet autocracy is on the rise as well. We see this in Russia as well as in China. Capitalist in nature, yet autocratic, these two formidable nations wield influence over vast stretches of the earth and, in China's case, great influence over the world's economy.¹⁰ This is our first challenge to consider. With this new place in the global economy what do we do about Russia and China related to their human rights record, given their relative power politically and economically on the world stage?

As permanent members of the U.N. Security Council,¹¹ both Russian and China can check any efforts related to human rights that they fear might threaten them. Both countries' human rights records are abysmal.¹² In the 20th century alone, eighty to ninety million people have perished under the internal policies of these two countries.¹³ Because of their geopolitical and economic influence, other nations are reluctant to call them out on their past or current records of oppression. They are like sea anchors slowing the advancement of human rights. There is little realistic pressure to apply by the rest of the U.N. on Russian or Chinese human rights policies. Simply put, are these two nations getting away with murder?

Closely related to the first challenge, the second challenge is the evolution of a two-tiered system of international criminal law. In some ways, it is the West and the rest. Why are only the less-powerful nations being held accountable for alleged international crimes while the more-

¹⁰ See Vivek Arora & Athanasios Vamvakidis, *Gauging China's Influence*, 47 FIN. & DEV., no. 4, 2010 at 11, 11; Daniel W. Drezner, *Bad Debts: Assessing China's Financial Influence in Great Power Politics*, 34 INT'L SEC. 2, 7 (2009) (describing the rapid rise and broad reach of China's financial and economic power).

¹¹ UN Security Council, Members of the Security Council in 2011, http://www.un.org/sc/searchres_sc_year_english.asp?year=2011 (last visited Jan. 3, 2012). Composed of five permanent members and ten rotating members, the Security Council's primary responsibility is to maintain international peace and security. Permanent members include the U.S., Great Britain, France, Russia and China. Exclusive to permanent members, these nations may exercise veto power to block unfavorable U.N. actions. U.N. Security Council, Membership in 2012, <http://www.un.org/sc/members.asp> (last visited Jan. 3, 2012).

¹² See U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, 2010 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHINA (INCLUDES TIBET, HONG KONG, AND MACAU) (2010), available at <http://www.state.gov/documents/organization/160451.pdf>; U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, 2010 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: RUSSIA (2010), available at <http://www.state.gov/documents/organization/160474.pdf>.

¹³ See MICHAEL CLODFELTER, WARFARE AND ARMED CONFLICTS: A STATISTICAL REFERENCE TO CASUALTY AND OTHER FIGURES, 1500–2000 (2nd ed. 2002).

developed nations of the West (and the two autocracies of Russia and China) being given a pass on their actions and records?

True justice and the rule of law can only be attained when that law is evenly applied across the board and not to just a few. This is a very serious threat to the advancement of the rule of law as a basis to international peace and security, to be sure. When the law is perceived to be unfair and unevenly applied, the respect for the system of international justice and law ends.

A more subtle challenge—perceived by the African Union¹⁴—is that international justice and international law have remained “white man’s justice.” Stemming from the hubris of the colonial era, the modern paradigm of international criminal law laid out in Rome in 1998¹⁵ has just become more of the same: punishing Africans for infractions by former colonial powers. This is not true, but the perception that it is harms the international attempts to punish international crimes and face down impunity wherever found around the world. “Extreme law is often extreme injustice,” quipped a sage Roman thinker.¹⁶

A third challenge is the perceived, if not actual, diminished and tarnished stature of the U.S. Weakened by a global recession and a stalemated political process, and exhausted by ten years of war, the U.S. has suffered through a tough decade. Once the bright and shining city on the hill, the U.S. has lost the moral high ground related to allegations of torture,¹⁷ secret prisons,¹⁸ the spectacle and tragedy of Abu Ghraib,¹⁹ and the show trials of Guantanamo.²⁰

¹⁴ Created on September 9, 1999, with the issuance of the Sirte Declaration by the Organization of African Unity, the African Union seeks to promote unity, prosperity, peace and human rights throughout the African continent. *AU in a Nutshell*, AFRICAN UNION, <http://au.int/en/about/nutshell> (last visited Jan. 3, 2012); see also Sirte Declaration, EAHG/Draft/Decl. (IV) Rev. 1 (Sept. 9, 1999). The African Union is made up of 53 African nations. *Profile: African Union*, BBC NEWS (Jan. 21, 2011), http://news.bbc.co.uk/2/hi/country_profiles/3870303.stm.

¹⁵ See Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90 (establishing the International Criminal Court).

¹⁶ PUBLIUS TERENTIUS AFER, *HEAUTONTIMOROUENOS*, 50 (Colman trans., Oxford 1777) (1400–1407).

¹⁷ See Keith Weir & Michael Holden, *UK Govt Forced to Publish U.S. Torture Allegations*, REUTERS (Feb. 10, 2010), <http://www.reuters.com/article/2010/02/11/us-britain-security-idUSTRE61A00V20100211> (regarding torture claims brought by a Guantanamo Bay detainee); HUMAN RIGHTS WATCH, UNITED STATES: REPORTS OF TORTURE OF AL-QAEDA SUSPECTS (Dec. 26, 2002), available at <http://www.hrw.org/print/news/2002/12/26/united-states-reports-torture-al-qaeda-suspects> (calling U.S. officials to be mindful that reported “stress and duress” techniques being used against detainees in Afghanistan may subject them to international prosecution).

¹⁸ See Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, WASH. POST, Nov. 2, 2005, <http://www.washingtonpost.com/wpdyn/content/article/2005/11/01/AR20051101016>

Stung by the attacks of 9-11, the U.S. threw away the book and developed policy that not only violated international law but its own domestic law.²¹ The illegality of electronic spying on its own citizens in violation of the Foreign Surveillance Act and the Intelligence Oversight Act²², among other laws, during the hey-day of the misconceived “war on terror” is indicative of how far the previous administration went to secure our national security. With a dysfunctional Congress unable to perform its constitutional duties related to oversight of our national security structure, the facts will never be known about the electronic eavesdropping program and other top secret policies.²³ As Robert Maynard Hutchins prophetically commented in his 1954 work, *GREAT BOOKS OF THE WESTERN WORLD*, “*The death of democracy is not likely to be an assassination from ambush. It will be a slow extinction from apathy, indifference, and undernourishment.*”²⁴

Along with the loss of stature by the U.S., the European Union²⁵ has slipped economically down a slope of fractious and ineffective policy from

44 .html (stating that the CIA has operated using “a covert prison system . . . [with] sites in eight countries” to temporarily and secretly house some detainees from the War on Terror).

¹⁹ See Seymour M. Hersh, *Torture at Abu Ghraib*, THE NEW YORKER, May 10, 2004, at 42–47 (describing the brutality faced by Iraqi prisoners at the hands of American soldiers).

²⁰ See *Protest Over ‘Shabby Show Trials,’* BBC NEWS (Mar. 22, 2007), http://news.bbc.co.uk/2/hi/uk_news/6477957.stm; *USA: Guantanamo Bay – Release of UK Resident Bisher Al-Rawi Welcomed*, AMNESTY INT’L UK (March 29, 2007), www.amnesty.org.uk/news_details.asp?NewsID=17318 (discussing the unfairness of the military trials through which Guantanamo Bay detainees are brought to justice).

²¹ See Richard Falk, Presentation to the Congressional Black Caucus Annual Legislative Conference (Sept. 2005) (“The US Government has long adopted double standards when it comes to respecting international law . . . [it] is outraged by violations of international law by its enemies, and chooses selectively when to comply and when to violate.”); see also Margaret L. Satterthwaite, *Rendered Meaningless: Extraordinary Rendition and the Rule of Law*, 75 GEO. WASH. L. REV. 1333 (2007) (discussing how the U.S. government “perverts” legal arguments in order to continue its practice of extraordinary rendition); Erwin Chemerinsky, *The Assault on the Constitution: Executive Power and the War on Terrorism*, 40 U.C. DAVIS L. REV. 1 (2006) (discussing how the Bush administration used the War on Terror as a shield by which it could circumnavigate Constitutional and international law).

²² Foreign Intelligence Surveillance Act, 50 U.S.C. §§ 1801–1812 (2006); Intelligence Oversight Act, 50 U.S.C. § 413 (2006).

²³ See Michael Avery, *The Constitutionality of Warrantless Electronic Surveillance of Suspected Foreign Threats to the National Security of the United States*, 62 U. MIAMI L. REV. 541, 592 (2008) (discussing how the state secrets privilege would allow the government to refuse to divulge any details regarding surveillance of perceived national security threats).

²⁴ Robert M. Hutchins, *The Great Conversation: The Substance of a Liberal Education*, in *GREAT BOOKS OF THE WESTERN WORLD* 80 (Robert Maynard Hutchins ed., 1952).

²⁵ Founded by Belgium, France, Germany, Italy, Luxembourg and the Netherlands after World War II, today, the European Union is composed of 27 European member countries. *Countries*, EUROPA, http://europa.eu/about-eu/countries/index_en.htm (last visited Jan. 3, 2012). The EU pursues economic cooperation; promote human rights, peace and democracy

which it may not be able to stop or correct. The loss of faith in the fundamentals of our Western economic model puts the world on the brink of economic collapse that can only bring further geopolitical weakness. One of the greatest political events in history, the union of European nations on a continent racked with conflict for a thousand years, is in jeopardy of dissolving, further eroding the stability of the world order.²⁶

A fourth challenge to the international community is the eventual withdrawal of the U.S. as a significant player in modern international criminal law over the next three to five years.²⁷ The nation that created and supported all of the international courts and tribunals from Nuremberg to Yugoslavia and Rwanda, as well as Sierra Leone and Cambodia, will be precluded for all intents and purposes from the advancement of international criminal law when these modern tribunals and courts end their work. This will start with the closure of the Special Court for Sierra Leone,²⁸ then the Extraordinary Chambers in the Courts of Cambodia²⁹, followed by the In-

in the region. *Basic Information on the European Union*, EUROPA, http://europa.eu/about-eu/basic-information/index_en.htm (last visited Jan. 3, 2012).

²⁶ See Don Melvin, *The European Union in Crisis; Will It Survive?*, ASSOC. PRESS, Sept. 28, 2011, available at <http://finance.yahoo.com/news/The-European-Union-in-crisis-apf-1393163375.html?x=0> (questioning whether the European financial crisis, with emphasis on its effect on the euro, will cause the EU to split apart).

²⁷ See *US & ICC Info*, THE AMERICAN NON-GOVERNMENTAL ORGANIZATION COALITION FOR THE INTERNATIONAL CRIMINAL COURT, <http://www.amicc.org/info.html> (last visited Jan. 3, 2012) (describing the U.S. stance on the ICC).

²⁸ See S.C. Res. 1315 (2000), U.N. Doc. S/RES/1315 (Aug. 14, 2000) (concerning the situation in Sierra Leone); see also Statute of the Special Court for Sierra Leone, Jan. 16, 2002, available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=uCldn1MJEW%3d&tabid=70> (providing provisions for the operation for the Special Court for Sierra Leone). The Special Court for Sierra Leone was established pursuant to Security Council Resolution 1315 (2000) to try those persons "who bear that greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law" since November 30, 1996. *About, THE SPECIAL COURT FOR SIERRA LEONE*, <http://www.sc-sl.org/ABOUT/tabid/70/Default.aspx> (last visited Nov. 11, 2011). The Special Court for Sierra Leone issued thirteen indictments by the prosecutor in 2003. *Id.* Defendants included leaders of the Armed Forces Revolutionary Council, the Civil Defense Forces, the Revolutionary United Front and former Liberian President Charles Taylor. *Id.*

²⁹ See Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, Oct. 27, 2004, available at http://www.eccc.gov.kh/sites/default/files/legal-documents/KR_Law_as_amended_27_Oct_2004_Eng.pdf. Founded in 2001 by the Cambodian National Assembly, the Extraordinary Chambers for the Courts of Cambodia (ECCC) is a joint undertaking by the United Nations and Cambodia. *About ECCC: Introduction*, EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA, <http://www.eccc.gov.kh/en/about-eccc/introduction> (last visited Oct. 14, 2011). The Court's mandate authorizes it to try senior leaders of the Khmer Rouge for violations of Cambodian domestic and international human rights law. *Id.* The ECCC is the first ever hybrid international criminal court. *Statement by the Co-*

ternational Criminal Tribunal for the Former Yugoslavia³⁰ and finally the International Criminal Tribunal for Rwanda.³¹ Americans have held senior positions in each of these courts, but once they are finished, only the International Criminal Court³² will remain—a court to which the U.S. is not a state party. Thus, the U.S. will statutorily be unable to be a significant player in international criminal law. The U.S. will only be able to look through the window as the world moves forward with its permanent international criminal court.

Without the U.S. in a leadership role, the international legal paradigm created at Rome will never truly reach its full potential. Coupled with the fact that the two autocracies, Russia and China, are not states parties to the Rome Statute,³³ the earlier challenges of a two tiered justice system and the perception that only the weaker nations of the world will be held accountable for any future atrocities is enhanced. The major nonparticipants in the permanent court, the U.S., Russia, and China will be in a separate, almost rogue, category within the Rome paradigm.

A fifth challenge involves the confused direction that the International Criminal Court appears to be taking. The public does not understand what the court is doing and why it takes particular actions. The court lacks

Prosecutors, EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA, <http://www.eccc.gov.kh/en/articles/statement-co-prosecutors-0> (last visited Jan. 3, 2012).

³⁰ The International Criminal Tribunal for the former Yugoslavia was established on May 25, 1993 pursuant to Security Council Resolution 827 (1993) to try those who allegedly committed war crimes during the conflict in the Balkans in the 1990s. S.C. Res. 827, U.N. Doc. S/RES/827 (May 25, 1993).

³¹ The International Criminal Tribunal for Rwanda was established on November 8, 1999 by the U.N. Security Council Resolution 955 and all trials will end by the end of 2011 and appeals by the end of 2013. *See International Criminal Tribunal for Rwanda*, U.S. DEP'T OF STATE, <http://www.state.gov/s/wci/ictr/index.htm> (last visited Jan. 3, 2012).

³² *See* Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9 (July 17, 1998), available at <http://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf> (establishing the International Criminal Court). The first treaty based international court, the International Criminal Court was founded with the adoption of the Rome Statute on July 17, 1998 and which entered into force on July 1, 2002. *About the Court*, INTERNATIONAL CRIMINAL COURT, <http://www.icc-cpi.int/Menus/ICC/About+the+Court/> (last visited Jan. 3, 2012). There are currently 119 state parties to the Rome Statute. *The States Parties to the Rome Statute*, INTERNATIONAL CRIMINAL COURT, <http://www.icc-cpi.int/Menus/ASP/states+parties/> (last visited Jan. 3, 2012). The United States has signed the treaty but has not ratified it. *See AMICC Response to the US Administration International Criminal Court Policy*, THE AMERICAN NON-GOVERNMENTAL ORGANIZATIONS COALITION FOR THE INTERNATIONAL CRIMINAL COURT, available at http://www.amicc.org/docs/AMICC_policy_response.pdf (last visited Jan. 3, 2012).

³³ *See The States Parties to the Rome Statute*, *supra* note 32 (noting all the parties to the Rome Statute).

strong outreach ability and is naïve politically.³⁴ It suffers from many misperceptions, some of its own doing and some not. It suffers from the perception mentioned above that the justice it is dispensing is “white man’s justice.”³⁵ Coupled with the development of the two-tiered justice system of powerful nations excused for their actions and other nations punished, the whole concept of international law and justice is in question. Can our permanent international court be fair? This is a question that the new court must address.

With the advent of the doctrine of the Responsibility to Protect (“R2P”), a sixth challenge has evolved.³⁶ For the first time since the recognition of R2P, the international community has invoked it to step in and stop the possibility of a mass killing in Libya.³⁷ Despite the perception by weaker nations that stronger U.N. members could invoke R2P as an excuse to intervene in the sovereignty of a state, the doctrine has the potential for being an important tool to use in order to stop a government from killing its own citizens.

The question is asked about the use of R2P. Like justice, should it be fairly and evenly applied or is R2P just a tool of international politics that helps feed the above perception that it is a tool of the Security Council’s permanent five members to wield their power over lesser members? Why are we invoking R2P in Libya concerning a threat of force by the Libyan government on the citizens of Bizerte,³⁸ and yet not invoking it regard-

³⁴ See Janine Natalya Clark, *Peace, Justice and the International Criminal Court: Limitations and Possibilities*, 9 J. INT’L CRIM. JUST. 521, 529 (2011) (analyzing the ICC’s limitations and the possibility of tools for the implementation of justice and peace).

³⁵ See David M. Crane, *White Man’s Justice: Applying International Justice after Regional Third World Conflicts*, 27 CARDOZO L. REV. 1683 (2006) (speaking about criminal justice and the advance of legal discipline in international criminal justice).

³⁶ First discussed at the 2005 United Nations World Summit, the concept of a responsibility to protect is an extraordinary development in international law. Known as “R2P,” this notion rests on the principle that States have a responsibility to protect civilian populations from violations of international humanitarian law. *The UN and the Responsibility to Protect*, INTERNATIONAL COALITION FOR THE RESPONSIBILITY TO PROTECT, <http://www.responsibilitytoprotect.org/index.php/about-rtop/the-un-and-rtop> (last visited Jan. 3, 2012). R2P establishes an affirmative obligation on State to assist, through peaceful means or collective force, nations in the enforcement of fundamental rights of civilians. *An Introduction to the Responsibility to Protect*, INTERNATIONAL COALITION FOR THE RESPONSIBILITY TO PROTECT, <http://www.responsibilitytoprotect.org/index.php/about-rtop/learn-about-rtop> (last visited Jan. 3, 2012).

³⁷ See S.C. Res. 1970, U.N. Doc. S/RES/1973 (March 17, 2011); see also S.C. Res. 1973, U.N. Doc. S/RES/1970 (Feb. 26, 2011).

³⁸ See *Impact of Action in Libya on the Responsibility to Protect*, INTERNATIONAL COALITION FOR THE RESPONSIBILITY TO PROTECT (May 2011), <http://www.responsibilitytoprotect.org/RtoP%20in%20Light%20of%20Libya%20FINAL.pdf> (describing R2P and its implementation in Libya).

ing the killing fields of Syria or Yemen?³⁹ Surely the answer cannot be that Libya has oil and the other two countries do not.

In the 21st century, conflict has evolved into what one can call “dirty little wars.”⁴⁰ Fought largely internally by combatants who are neither schooled in nor aware of the laws of armed conflict.⁴¹ These players fight battles whose outcomes violate the protected status of civilians, particularly women and children. Since the 1990’s conflict has become unregulated and brutal, replete with war crimes and crimes against humanity.

With the U.S. calling the Geneva Conventions⁴² upon which these protections of persons found on the battlefield are based, quaint and outdated,⁴³ the very paradigm of the rule of law in conflict has been brought into question. The U.S.’ action in the “war on terror” has undermined the principles of the laws of armed conflict.

No longer an existential threat, the eighth and final challenge to international law in this age of extremes is the resulting destabilization of international peace and security through the threats to our environment and the loss of key commodities. With declining oil reserves, nations will seek to control those reserves with a growing sense of self-preservation. This can only harm world stability.

Along with the decline of oil, the world will continue to suffer the loss of potable water.⁴⁴ Already a billion human beings lack safe drinking water.⁴⁵ As the world changes climatically for whatever the reason, drought and shifting rainfall will only stress mankind and the international community. Once again, it will be the weak who will suffer most as nations, region,

³⁹ See *id.*

⁴⁰ DAVID R. KOHUT & OLGA VILLELLA, HISTORICAL DICTIONARY OF THE “DIRTY WARS,” at ix (2nd ed. 2010) (explaining the origination of the term “dirty wars” came from the 1976–1980 dictatorship in Argentina but the terms has expanded its definition to refer to state sponsored oppression).

⁴¹ See *id.*

⁴² The Geneva Conventions are at the core of international humanitarian law. The Conventions and their Additional Protocol protect people not engaged in the hostilities, such as civilians and doctors, as well as those who are no longer participating in the hostilities, such as wounded soldiers or prisoners of war. See Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.

⁴³ Roland Watson, *Geneva Accords Quaint and Obsolete, Legal Aide Told Bush*, TIMES ONLINE (May 19, 2004), <http://www.timesonline.co.uk/tol/news/world/iraq/article426900.ece> (noting that after September 11th the White House’s chief legal advisor told Bush that parts of the Geneva Convention were “quaint” and “obsolete”).

⁴⁴ WORLD HEALTH ORG. & UNICEF, MEETING THE MDG DRINKING WATER AND SANITATION TARGET: THE URBAN AND RURAL CHALLENGE OF THE DECADE 10 (2006), *available at* http://www.who.int/water_sanitation_health/monitoring/jmpfinal.pdf.

⁴⁵ UNESCO, UNITED NATIONS WORLD WATER DEVELOPMENT REPORT 2: WATER, A SHARED RESPONSIBILITY 43 2006, *available at* <http://unesdoc.unesco.org/images/0014/001454/145405E.pdf>.

and peoples begin to react and go into survival mode in order to sustain their way of life.

The flip-side to this challenge is the rise of the world's oceans and the consequent loss of coastlines.⁴⁶ The resulting impact on people forced to move from those coastlines will stress already weakened coastal states, many of which are unable to handle that movement. I call this "the Noah effect." How this plays out is an interesting parlor game of grim possibilities. Water will become a commodity far more precious than oil, and control of it will wield power and influence in a thirsty world.

III. CONCLUDING THOUGHTS

These challenges certainly threaten the rule of law, and in this age of extremes, the foundation of international law. This paper was not meant to ring the bell of doom however, there is much to be optimistic about regarding the rule of law and the place international law has in the functioning of the international community. For example, the interesting role social media has played in exposing atrocity, especially in the recent occurrences in the Middle East.⁴⁷ These many months in the Middle East have shown that technology has caught up to those Dictators and thugs who choose to destroy and harm. They simply cannot get away with what they are doing to their own citizens any longer.

Additionally we are holding heads of state accountable for international crimes.⁴⁸ Regardless of how effective this accountability is, international prosecutors are doing what should have been done long ago to prosecute violations of international criminal law by heads of state, something unheard of just fifteen years ago. The jurisprudence regarding head-of-state immunity is moving in the right direction, and it remains to be seen whether it has a deterrent effect. However, I suspect that it will. Indicting a head of state certainly can set the groundwork for a lasting peace. One only has to

⁴⁶ See *Coastal Zones and Sea Level Rise*, U.S. ENVTL. PROT. AGENCY, <http://epa.gov/climatechange/effects/coastal/index.html> (last updated Apr. 14, 2011) (discussing the rise in sea level in the United States).

⁴⁷ See Greg Beaubien, *Facebook Playing A Vital but Reticent Role in Middle East Revolts*, PUBLIC RELATIONS TACTICS, Mar. 2011, at 4 (discussing Facebook's role in the revolts in the Middle East and Facebook's desire to not be seen as taking sides); Amy Jacques, *On the Ground': Pulitzer Prize-winner Kristof on Covering Crisis in the Middle East*, PUBLIC RELATIONS TACTICS, Apr. 2011, at 11 (discussing how social media has changed the revolts); *What Role Did Social Media and Capable Devices Have on the Ongoing Events in the Middle East*, ENGINEERING & TECH., Aug. 2011, at 88 (noting that social networks play a role in overcoming Internet censorship).

⁴⁸ See generally PROSECUTING HEADS OF STATE (Ellen L. Lutz & Caitlin Reiger eds., 2009) (containing a collection of pieces that discusses the prosecution of heads of states).

look at the result of the indictment of Charles Taylor in Liberia.⁴⁹ Liberia has held a peaceful election and is on a road for possible recovery from a ten-year civil war.⁵⁰

In the information age, warfare itself is becoming bad for business. During the industrial age war was good for business, particularly in the steel and other heavy industrial sectors.⁵¹ However, in the interconnected world in which we live, with linked economic and financial systems, any conflict can disrupt the free flow of commerce.⁵² Perhaps this in and of itself will lessen the chance of war. It remains to be seen.

These eight challenges are only illustrative of a worrisome trend in a world turned upside down in the 1990's when the strategic balance of the world tipped in favor of elements largely left on the sidelines of history. Mankind has the ability to understand the challenges and perhaps to stand up to them. We are in an age of extremes as the balance of power shifts back and forth between nations, organizations, corporations, and non-state actors, each looking for a center point where a sense of stability can be realized. Regardless of the shift, it is only through the rule of law that stability will be achieved. Virgil, in his *Eclogues*, declared over two thousand years ago: "Be it your concern, Roman, to rule the nations under law and establish the way of peace; to spare the conquered and put down the mighty from their seat."⁵³

⁴⁹ *The Prosecutor vs. Charles Ghankay Taylor*, THE SPECIAL COURT FOR SIERRA LEONE, <http://www.sc-sl.org/CASES/ProsecutorvsCharlesTaylor/tabid/107/Default.aspx> (last visited Jan. 3, 2012) (outlining the Charles Taylor trial).

⁵⁰ See David Zounmenou, *Managing Post-War Liberia: An Update*, INSTITUTE FOR SECURITY STUDIES (July 7, 2008), <http://dspace.cigilibrary.org/jspui/bitstream/123456789/31059/1/LIBERIA%207-7-08.pdf?1> (discussing Liberia's progress post-war).

⁵¹ See HARVEY O'CONNOR, *MELLON'S MILLIONS: THE BIOGRAPHY OF A FORTUNE, THE LIFE AND TIME OF ANDREW W. MELLON* 64 (1933) ("War is Pittsburgh's fairy godmother.").

⁵² See generally EDWIN J. CLAPP, *ECONOMIC ASPECTS OF THE WAR* (1915) (showing the economic effects of World War I).

⁵³ John Bartlett, *Familiar Quotations* 119 (Boston, Little Brown & Co. 1865) (citing to VERGIL, *AENEID*, BOOK VI, 158, at 847).